

E-filed 1/30/06

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HORTA, LLC, a Delaware limited liability
company,

Plaintiff,

v.
CITY OF SAN JOSE, a municipal
corporation,

Defendant.

CASE NO. C02-04086 JF (RS)

[Related Case Nos. C00-20018 JF
and C05-03778JF]

STIPULATION AND [PROPOSED]
ORDER CONTINUING FEBRUARY 3,
2006 HEARING ON HORTA, LLC'S
MOTION TO RECONSIDER, REOPEN,
AND AMEND JUDGMENT

Judge: Hon. Jeremy Fogel
Complaint: August 23, 2002

STIPULATION

WHEREAS, on February 28, 2005, the Court entered judgment in this action;

WHEREAS, on March 14, 2005, plaintiff Horta, LLC ("Horta") filed its Motion to

4 Reconsider, Reopen, and Amend Judgment (the "Motion to Amend") and set it for hearing
5 on May 6, 2006;

6 WHEREAS, on May 6, 2005, the Court continued the hearing on the Motion to
7 Amend to August 5, 2005 to permit Horta to conduct additional discovery relating to issues
8 presented in the Motion to Amend;

9 WHEREAS, Horta has served discovery on non-party Federal Aviation

10 Administration ("FAA"), in the form of document requests and requests for deposition
11 testimony relating to issues presented in the Motion to Amend;

12 WHEREAS, on July 7, 2005, Horta and the City stipulated to continuing the August
13 5, 2005 hearing on the Motion to Amend at least ninety (90) days;

14 WHEREAS, on July 13, 2005, the Court continued the hearing on the Motion to
15 Compel to November 4, 2005;

16 WHEREAS, on September 20, 2005 and October 14, 2005, the FAA filed motions
17 to quash Horta's subpoenas for documents and deposition testimony;

18 WHEREAS, Horta has filed a separate action to enforce its right to the requested
19 discovery from the FAA in the related case *Horta, LLC v. Federal Aviation Administration*,
20 United States District Court, Northern District of California, Case No. C 05-03778 HRL (the
21 “FAA Action”);

22 WHEREAS, on September 30, 2005, Horta and the City stipulated to continuing the
23 November 4, 2005 hearing on the Motion to Amend at least ninety (90) days;

24 WHEREAS, on October 5, 2005, the Court continued the hearing on the Motion to
25 Amend to February 3, 2006;

26 WHEREAS, on October 27, 2005, Horta filed a motion for summary judgment in the
27 *FAA Action* to compel the FAA to provide complete responses to Horta's discovery
28 requests and to provide the requested deposition testimony;

1 WHEREAS, the Court has taken the FAA's motions to quash and Horta's motion for
2 summary judgment under submission at the close of the December 16, 2005 combined
3 hearing on the motions and has not yet ruled on them;

4 WHEREAS, Horta contends that it requires additional time to complete discovery
5 pertaining to the issues raised in the Motion to Amend;

6 WHEREAS, Horta and the City of San Jose (the "City") agree that February 3, 2006
7 hearing on the Motion to Amend should be continued for at least ninety (90) days;

8 THEREFORE, IT IS HEREBY STIPULATED by and between the parties to this
9 action that the February 3, 2006 hearing on Horta's Motion to Amend shall be continued at
10 least ninety (90) days.

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12 Dated: January 24, 2006

DLA PIPER RUDNICK GRAY CARY US LLP

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By: 
JAMES M. CHADWICK, ESQ.
DIANA NG FUNG, ESQ.

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Attorneys for Plaintiff HORTA, LLC

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Dated: January 26, 2006

RICHARD DOYLE, City Attorney

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By: 
JOSEPH P. DICIUCCIO
Sr. Deputy City Attorney

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Attorneys for Defendant CITY OF SAN JOSE

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ORDER

2 PURSUANT TO THE STIPULATION, IT IS SO ORDERED. The hearing on Horta's
3 Motion to Reconsider, Reopen, and Amend Judgment is further continued from February
4 3, 2006 to May 5, 2006, at 9:00 a.m., in the courtroom of the Honorable Jeremy
5 Fogel, located at 280 South First Street, San Jose, California.

Dated: 1/30/06

HON. JEREMY FOGEL
United States District Court Judge